

SENATE BILL 2316  
By Dixon

AN ACT to amend Tennessee Code Annotated, Title 4, Chapter 21, to enact the "Tennessee Civil Rights Act of 1998".

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 4 Chapter 21, is amended by adding Sections 2 through 10 of this act as a new, appropriately designated part.

SECTION 2 This act shall be known and may be cited as the "Tennessee Civil Rights Act of 1998".

SECTION 3. As used in this act, unless the context otherwise requires:

(1) "Because of gender" means, but is not limited to, on account of pregnancy, childbirth, or related medical conditions.

(2) "Compensatory damages" means damages for mental anguish, loss of dignity, and other intangible injuries, but "compensatory damages" does not include punitive damages.

(3) "Disability" means a physical or mental impairment that substantially limits a major life function, but "disability" does not include:

(A) Compulsive gambling, kleptomania, or pyromania;

(B) Current use of illegal drugs or psychoactive substance use disorders resulting from illegal use of drugs; or

(C) Alcoholism.

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(4) "Employee" does not include any individual employed by his or her parents, spouse, or child; an individual employed under a special license in a nonprofit sheltered workshop or rehabilitation facility; or an individual employed outside the state of Tennessee.

(5) "Employer" means a person who employs nine (9) or more employees in the state of Tennessee in each of the twenty (20) or more calendar weeks in the current or preceding calendar year, or any agent of such person.

(6) "National origin" includes ancestry.

(7) "Place of public resort, accommodation, assemblage, or amusement" means any place, store, or other establishment, either licensed or unlicensed, that supplies accommodations, goods, or services to the general public, or that solicits or accepts the patronage or trade of the general public, or which is supported directly or indirectly by government funds, but "place of public resort, accommodation, assemblage, or amusement" does not include:

(A) any lodging establishment which contains not more than five (5) rooms for rent and which is actually occupied by the proprietor of such establishment as a residence; or

(B) any private club or other establishment not in fact open to the public.

(8) "Religion" means all aspects of religious belief, observation, and practice.

SECTION 4 Every governmental entity or natural person who, under color of any statute, ordinance, regulation, custom, or usage, of this state or any of its political subdivisions, subjects, or causes to be subjected, any person to the deprivation of any rights, privileges, or immunities secured by the Constitution of Tennessee, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress. In the discretion of the court, a party held liable under this section shall also pay the injured party's cost of litigation and reasonable attorneys' fees in an amount to be fixed by the court. When construing this section, a court may look for guidance to state and federal decisions interpreting the federal Civil Rights

Act of 1871, as amended and codified in 42 U.S.C. § 1983, as in effect on January 1, 1993, which decisions and act shall have persuasive authority only.

SECTION 5 (a) An action for injunctive relief or civil damages, or both, shall lie for any person who is subjected to acts of:

- (1) intimidation or harrassment;
- (2) violence directed against his person; or
- (3) vandalism directed against his real or personal property, where such acts are motivated by racial, religious, or ethnic animosity.

Any aggrieved party who initiates and prevails in an action authorized by this section shall be entitled to damages, including punitive damages, and in the discretion of the court to an award of the cost of the litigation and reasonable attorneys' fees in an amount to be fixed by the court.

(b) This section shall not apply to speech or conduct protected by the First Amendment of the United States Constitution or the Constitution of the state of Tennessee.

SECTION 6. The right of an otherwise qualified person to be free from discrimination because of race, religion, ancestry or national origin, gender, or the presence of any sensory, mental, or physical disability is recognized as and declared to be a civil right. This right shall include, but not be limited to:

- (1) The right to obtain and hold employment without discrimination;
- (2) The right to the full enjoyment of any of the accommodations, advantages, facilities, or privileges or any place of public resort, accommodation, assemblage, or amusement;
- (3) The right to engage in property transactions without discrimination;
- (4) The right to engage in credit and other contractual transactions without discrimination; and
- (5) The right to vote and particpate fully in the political process.

Any person who is injured by an intentional act of discrimination in violation of subdivision (2), (3), (4) or (5) of this section shall have a civil action in a court of competent jurisdiction to enjoin further violations, to recover compensatory and punitive damages, and, in the discretion of the court, to recover the cost of litigation and reasonable attorneys' fees.

SECTION 7. (a) Any individual who is injured by employment discrimination by an employer in violation of Section 6 subdivision (1) shall have a civil action in a court of competent jurisdiction, which may issue an order prohibiting the discriminatory practices and provide affirmative relief from the effects of the practices, and award back pay, interest on back pay, and, in the discretion of the court, the cost of litigation and reasonable attorneys' fees. No liability for back pay shall accrue from a date more than two (2) years prior to the filing of an action.

(b) In addition to the remedies under subsection (a) of this section, any individual who is injured by intentional discrimination by an employer in violation of Section 6 subdivision (1) shall be entitled to recover compensatory damages and punitive damages. The total compensatory and punitive damages awarded under this subsection shall not exceed:

(1) the sum of fifteen thousand dollars (\$15,000) in the case of an employer who employs fewer than fifteen (15) employees in each of twenty (20) or more calendar weeks in the current or preceding calendar year;

(2) the sum of fifty thousand dollars (\$50,000) in the case of an employer who employs more than fourteen (14) and fewer than one hundred and one (101) employees in each of twenty (20) or more calendar weeks in the current or preceding calendar year;

(3) the sum of one hundred thousand dollars (\$100,000) in the case of an employer who employs more than one hundred (100) and fewer than two hundred and one (201) employees in each of twenty (20) or more calendar weeks in the current or preceding calendar year;

(4) the sum of two hundred thousand dollars (\$200,000) in the case of an employer who employs more than two hundred (200) and fewer than five hundred and one (501) employees in each of twenty (20) or more calendar weeks in the current or preceding calendar year; and

(5) the sum of three hundred thousand dollars (\$300,000) in the case of an employer who employs more than five hundred (500) employees in each of twenty (20) or more calendar weeks in the current or preceding calendar year.

(c) Any action based on employment discrimination in violation of Section 6 subdivision (1) shall be brought within one (1) year after the alleged employment discrimination occurred, or within ninety (90) days of receipt of a "Right to Sue" letter or notice of "Determination" from the United States Employment Opportunity Commission concerning the alleged unlawful employment practice, whichever is later.

SECTION 8. (a) The provisions of this act relating to employment shall not be applicable with respect to the employment by a religious corporation, association, society, or other religious entity.

(b) It shall not constitute employment discrimination under this act for an employer to refuse to accommodate the religious observance or practice of an employee or prospective employee if the employer demonstrates that he is unable to reasonably make such accommodation without undue hardship on the conduct of the employer's business.

(c) A defendant may avoid liability under this act by showing that his actions were based on legitimate, non-discriminatory factors and not on unjustified reasons.

SECTION 9. Nothing in this act shall be construed to waive the sovereign immunity of the state.

SECTION 10. (a) Provided the conduct at issue is based on a bona fide business judgment and is not a pretext for prohibited discrimination, nothing in this act shall be construed to prohibit or restrict:

(1) An insurer, hospital, medical service plan, hospital service corporation, hospital and medical service corporation, health maintenance organization, or any agent or entity that administers benefit plans, or any bank, savings and loan, or other financial institution from underwriting insurance or lending risks, or administering such risks that are based on or not inconsistent with federal or state law;

(2) A person covered by this act from establishing, sponsoring, observing or administering the terms of a bona fide benefit plan that are based on underwriting risks, classifying risks, or administering such risks that are based on or not inconsistent with federal or state law; or

(3) A person covered by this act from establishing, sponsoring, observing or administering the terms of a bona fide benefit plan that is not subject to federal or state laws that regulate insurance.

(b) This act shall not apply to matters regulated by the Tennessee Insurance Code.

SECTION 11. If any provision of this act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of this act which can be given effect without the invalid provision or application, and to this end the provisions of this act are declared to be severable.

SECTION 12. All laws and parts of laws in conflict with this act are hereby repealed.

SECTION 13. This act shall take effect upon becoming a law, the public welfare requiring it.